

#### REMARKS

The Applicants thank the Examiner for the consideration shown the present application thus far. Claims 5-14 are pending and stand finally rejected.

#### **Suspension of Prosecution Pending the Interference Between The Zyzak and Elder Applications**

As discussed below, the present claims are subject to one rejection over an art reference, specifically, US Patent Application No. 2004/0058054, filed in the name of Elder, et al. The present application is related and commonly assigned to US Patent Application No. 10/606,137, filed in the name of Zyzak, et al. The Zyzak '137 application claims priority to an application filed on September 20, 2002 while the Elder application claims priority to September 19, 2002. Generally speaking, the subject matter of the present case, the Zyzak '137 application and the Elder application relates to the reduction of acrylamide in food products.

On August 22 of this year, a Suggestion of Interference was filed in the Zyzak '137 application over the Elder application. Moreover, the US PTO Private Pair suggests that the prosecution in the Elder application has been suspended, perhaps due to an interference with another application dealing with the reduction of acrylamide in food products.

Regardless, the present application is rejected over the Elder application and commonly owned with the Zyzak '137 application. It is respectfully requested that prosecution in the present application be suspended pending the outcome of the Suggestion of Interference between the Elder and Zyzak '137 application.

#### **35 U.S.C. § 112 Rejection**

Claims 5-14 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as their invention.

The Examiner states that the term "reduced" in Claims 5 and 12 is a relative term and therefore renders the claims indefinite. The Examiner further states that the term "reduced" "is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention."

Applicants respectfully disagree with the Examiner's assertions. First, Applicants point out that the claims alone do not have to define the term "reduced". Rather, the specification can provide the proper basis for definition of any term used in the claim. Applicants assert that the specification does in fact provide the proper definition and understanding of the term "reduced" as it relates to acrylamide-reduction.<sup>1</sup>

In addition, common usage of a term can provide definition for claim terms. For example, the term "reduced", in common usage, is defined as "to lessen in extent, amount, number, degree or price." The American Heritage Dictionary, 2<sup>nd</sup> Ed., Houghton Mifflin Company, Boston (1991). Such definition bolsters Applicants' use of the term in their specification since Applicants teach the reduction of the amount of acrylamide in food material in comparison to food material not treated for such acrylamide reduction.

Whether one skilled in the art looks to the specification or to common usage, it would be apparent to one skilled in the art that the term "reduced," as used in the presently rejected claims, means that the level of asparagine/acrylamide is less in treated food material, i.e., food material not exposed to asparagine-reducing enzymes. Thus, the term "reduced" means that the food material has been treated such that the level of asparagine/acrylamide is less than what it would be in untreated food material.

Applicants respectfully assert that one skilled in the art would understand that the use of the term "reduced" in the present claims describes the level of asparagine or acrylamide in treated food material as compared to the level present in untreated food material. Therefore, it is respectfully asserted that the term "reduced" in the presently rejected claims does indeed provide a standard for ascertaining the meaning, such that one skilled in the art would be reasonably apprised of the scope of the claimed invention.

As such, Applicants respectfully request reconsideration and allowance of Claims 5-14 over the Examiner's 35 U.S.C. § 112, second paragraph, rejection.

### **35 U.S.C. § 103 Rejection**

Claims 5-14 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Elder, et al. (U.S. Patent Application No. 2004/0058054—hereinafter, Elder '054). The Applicants respectfully traverse this rejection.

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<sup>1</sup> Applicants' Specification, page 3, lines 12-15: "Accordingly, Applicants have further discovered that acrylamide formation in heated foods can be *reduced* by removing at least a portion of the asparagine before cooking. When such foods containing *reduced* levels of asparagine are heated, the amount of acrylamide formed is reduced. " [Emphasis added.]

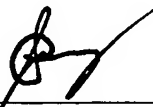
Please see the Remarks made above regarding the Elder application. Applicants respectfully request that the prosecution of the present claims be suspended pending the outcome of the Suggestion of Interference between the Zyzak '137 and Elder applications.

**Double Patenting - Non-Statutory**

Claims 5-14 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-50 of co-pending Application No. 10/606,260. The '260 application is commonly owned and generally related to both the present application and the Zyzak '137 application. As discussed above, it is respectfully requested that prosecution in the present case be suspended pending the outcome of the Suggestion of Interference in the Zyzak '137 application. As such, the applicants respectfully request that this provisional rejection be suspended.

Claims 5-14 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 13-14 of co-pending Application No. 10/603,978. The '978 application is commonly owned and generally related to both the present application and the Zyzak '137 application. As discussed above, it is respectfully requested that prosecution in the present case be suspended pending the outcome of the Suggestion of Interference in the Zyzak '137 application. As such, the applicants respectfully request that this provisional rejection be suspended.

Respectfully submitted,  
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